

SHCC Board Training 2018

I. OPMA (UTAH OPEN & PUBLIC MEETINGS ACT; UC §52-4-101 et seq.)

- OPMA requires annual training for all public bodies. This is it.
- Legislative intent is that public bodies take their actions and conduct their deliberations openly. This means your work should be transparent, with only a few exceptions.
- A "Meeting" is the convening of a public body with a quorum present, including a workshop or executive session, for the purpose of discussing, receiving comments from the public, or acting upon a matter over which the public body has jurisdiction or advisory power.
- A quorum is required, which is a simple majority of the membership unless otherwise defined by applicable law. The SHCC now has 14 members, and a quorum is 8 members.
- An electronic meeting can be held only if all participants can hear or observe communications, and if the public body adopted rules in compliance with OPMA.
- Meetings may only be held after complying with Notice Requirements, which include posting a written notice at the place where the meeting will be held, notifying at least one local general circulation newspaper or local media correspondent, and posting notice on the "Utah Public Notice Website" (63F-1-701)
- At least 24 hours prior to meeting, an agenda must be posted that identifies all action items stated with reasonable specificity, and the date, time, and location of the meeting. This means you need a detailed agenda. ("old business, new business" is not enough, and you can't take final action on a topic that is not on the agenda)
- A public body that holds regular meetings that are scheduled in advance over the course of a year must give public notice at least once a year of its annual meeting schedule.
- A meeting or portion of a meeting may be closed to the public only after 2/3 of members present vote in a public meeting to close the meeting and ONLY in specified circumstances, such as to discuss an individual's character, professional competence, or physical or mental health; pending or reasonably imminent litigation; a discussion of security personnel, devices or systems; investigative proceedings regarding allegations of criminal misconduct; or strategy sessions to discuss the purchase, exchange, lease or sale of real property. You are authorized but not required to close a meeting.
- Final votes must be open and on the record, and cannot be taken in closed session. You also cannot approve a rule, contract or appointment in closed session.
- Minutes and recordings must be made and posted. The minutes must include the names of all members present or absent, all matters proposed, discussed, or decided, the names and information from individuals giving testimony, and each member's individual vote on each matter. This includes closed meetings, but their records are classified as protected. Be aware that if a GRAMA request is received, any of your texts may be requested. So please do not text during meetings.
- Actions taken in violation of OPMA are voidable, and a member of a public body who intentionally violates the closed meeting provisions may be prosecuted for a class B misdemeanor. (6 Months jail and/or \$1,000.00 fine)

ETHICS/CONFLICTS (PUBLIC OFFICERS & EMPLOYEES ETHICS ACT UC 67-16 & 67-25)

- The purpose of the Act is to avoid actual or potential conflicts between officers' and employees' public duties and private interests.
- Much of this is common sense, but violations are serious and come with the possibility of losing your career or even criminal prosecution, so it's worth reviewing.
- You may not have any outside employment that
 - ✓ constitutes a conflict of interest (direct/immediate involvement, including financial interests, with those who are affected by the SHCC's decisions);
 - ✓ interferes with fulfilling your job responsibilities;
 - ✓ constitutes providing political services, political consultation, or lobbying;
 - ✓ provides consulting services, legal services, or other services that the employee could provide within the course and scope of the employee's gov't employment; or
 - ✓ interferes with the employee's work hours unless the employee takes personal leave.
- It's an offense to
 - ✓ accept employment or engage in any business or professional activity that might require or induce you to improperly disclose information gained by reason of your official position;
 - ✓ disclose or improperly use controlled, private, or protected information acquired...in the course of official duties in order to further your personal economic interest or to secure special privileges or exemptions for anyone;
 - ✓ to use or attempt to use your official position to further your personal economic interest; or secure special privileges or exemptions for anyone
 - ✓ accept other employment that might impair your independence of judgment in the performance of your public duties; or
 - ✓ accept other employment that might interfere with the ethical performance of your public duties.
- You cannot demand that a person donate personal property, money, or services to any agency as a condition of granting an application, permit, approval, or other authorization
- You cannot knowingly receive, accept, solicit a gift or economic benefit that would tend to influence the impartial discharge of public duties.
 - ✓ An occasional non-pecuniary gift valued less than \$50 is not a violation of statute, but caution...
 - ✓ Gov. Herbert's exec. Order prohibits employees from accepting gifts, even if less than \$50, with only a few exceptions (inexpensive meals, trinkets)
- You cannot have personal investments in any business entity which will create a substantial conflict between your private interests and your public duties.
- **Situations are very fact-specific, so if you have ANY doubts, please consult your AAG**
- **In the event of questions relating to this Board's meetings or activities, please email/call me: AAG Debbie Kurzban; dkurzban@agutah.gov; 801-366-0354**

Chapter 4 Open and Public Meetings Act

Part 1 General Provisions

52-4-101 Title.

This chapter is known as the "Open and Public Meetings Act."

Enacted by Chapter 14, 2006 General Session

52-4-102 Declaration of public policy.

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.
- (2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
 - (a) take their actions openly; and
 - (b) conduct their deliberations openly.

Renumbered and Amended by Chapter 14, 2006 General Session

52-4-103 Definitions.

As used in this chapter:

- (1) "Anchor location" means the physical location from which:
 - (a) an electronic meeting originates; or
 - (b) the participants are connected.
- (2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.
- (3)
 - (a) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.
 - (b) "Convening" does not include the initiation of a routine conversation between members of a board of trustees of a large public transit district if the members involved in the conversation do not, during the conversation, take a tentative or final vote on the matter that is the subject of the conversation.
- (4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
- (5) "Electronic message" means a communication transmitted electronically, including:
 - (a) electronic mail;
 - (b) instant messaging;
 - (c) electronic chat;
 - (d) text messaging, as that term is defined in Section 76-4-401; or
 - (e) any other method that conveys a message or facilitates communication electronically.
- (6)
 - (a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or

acting upon a matter over which the public body or specific body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

- (i) a chance gathering or social gathering;
- (ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405; or
- (iii) a convening of a three-member board of trustees of a large public transit district as defined in Section 17B-2a-802 if:
 - (A) the board members do not, during the conversation, take a tentative or final vote on the matter that is the subject of the conversation; or
 - (B) the conversation pertains only to day-to-day management and operation of the public transit district.

(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:

- (i) no public funds are appropriated for expenditure during the time the public body is convened; and
- (ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:
 - (A) for which no formal action by the public body is required; or
 - (B) that would not come before the public body for discussion or action.

(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9)

(a) "Public body" means:

- (i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:
 - (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
 - (B) consists of two or more persons;
 - (C) expends, disburses, or is supported in whole or in part by tax revenue; and
 - (D) is vested with the authority to make decisions regarding the public's business; or
- (ii) any administrative, advisory, executive, or policymaking body of an association, as that term is defined in Section 53G-7-1101, that:
 - (A) consists of two or more persons;
 - (B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and
 - (C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.

(b) "Public body" includes:

- (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in Section 11-13-103; and
- (ii) a governmental nonprofit corporation as that term is defined in Section 11-13a-102.

(c) "Public body" does not include:

- (i) a political party, a political group, or a political caucus;
- (ii) a conference committee, a rules committee, or a sifting committee of the Legislature;

- (iii) a school community council or charter trust land council, as that term is defined in Section 53G-7-1203;
- (iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201;
- (v) a taxed interlocal entity, as that term is defined in Section 11-13-602; or
- (vi) the following Legislative Management subcommittees, which are established in Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to recommend for employment, except that the meeting in which a subcommittee votes to recommend that a candidate be employed shall be subject to the provisions of this act:
 - (A) the Research and General Counsel Subcommittee;
 - (B) the Budget Subcommittee; and
 - (C) the Audit Subcommittee.
- (10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.
- (11)
 - (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.
 - (b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.
- (12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.
- (13) "Specified body":
 - (a) means an administrative, advisory, executive, or legislative body that:
 - (i) is not a public body;
 - (ii) consists of three or more members; and
 - (iii) includes at least one member who is:
 - (A) a legislator; and
 - (B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and
 - (b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(vi).
- (14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Amended by Chapter 315, 2018 General Session

Amended by Chapter 356, 2018 General Session

Amended by Chapter 415, 2018 General Session

Amended by Chapter 424, 2018 General Session

52-4-104 Training.

- (1) The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.
- (2) The presiding officer shall ensure that any training described in Subsection (1) complies with Title 63G, Chapter 22, State Training and Certification Requirements.

Amended by Chapter 200, 2018 General Session

Part 2 Meetings

52-4-201 Meetings open to the public -- Exceptions.

- (1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.
- (2)
 - (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.
 - (b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:
 - (i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;
 - (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;
 - (iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or
 - (iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

Renumbered and Amended by Chapter 14, 2006 General Session
Amended by Chapter 263, 2006 General Session

52-4-202 Public notice of meetings -- Emergency meetings.

- (1)
 - (a)
 - (i) A public body shall give not less than 24 hours' public notice of each meeting.
 - (ii) A specified body shall give not less than 24 hours' public notice of each meeting that the specified body holds on the capitol hill complex.
 - (b) The public notice required under Subsection (1)(a) shall include the meeting:
 - (i) agenda;
 - (ii) date;
 - (iii) time; and
 - (iv) place.
- (2)
 - (a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.
 - (b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.
- (3)
 - (a) A public body or specified body satisfies a requirement for public notice by:
 - (i) posting written notice:
 - (A) at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held; and

- (B) on the Utah Public Notice Website created under Section 63F-1-701; and
- (ii) providing notice to:
 - (A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or
 - (B) a local media correspondent.
- (b) A public body or specified body is in compliance with the provisions of Subsection (3)(a)(ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63F-1-701(4)(d).
- (c) A public body whose limited resources make compliance with Subsection (3)(a)(i)(B) difficult may request the Division of Archives and Records Service, created in Section 63A-12-101, to provide technical assistance to help the public body in its effort to comply.
- (4) A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under Subsection (3).
- (5)
 - (a) The notice requirement of Subsection (1) may be disregarded if:
 - (i) because of unforeseen circumstances it is necessary for a public body or specified body to hold an emergency meeting to consider matters of an emergency or urgent nature; and
 - (ii) the public body or specified body gives the best notice practicable of:
 - (A) the time and place of the emergency meeting; and
 - (B) the topics to be considered at the emergency meeting.
 - (b) An emergency meeting of a public body may not be held unless:
 - (i) an attempt has been made to notify all the members of the public body; and
 - (ii) a majority of the members of the public body approve the meeting.
- (6)
 - (a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.
 - (b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.
 - (c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:
 - (i) listed under an agenda item as required by Subsection (6)(a); and
 - (ii) included with the advance public notice required by this section.
- (7) Except as provided in this section, this chapter does not apply to a specified body.

Amended by Chapter 77, 2016 General Session

52-4-203 Written minutes of open meetings -- Public records -- Recording of meetings.

- (1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.
- (2)
 - (a) Written minutes of an open meeting shall include:
 - (i) the date, time, and place of the meeting;
 - (ii) the names of members present and absent;
 - (iii) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

- (iv) a record, by individual member, of each vote taken by the public body;
 - (v) the name of each person who:
 - (A) is not a member of the public body; and
 - (B) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;
 - (vi) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(a)(v); and
 - (vii) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.
- (b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that minutes include the substance of matters proposed, discussed, or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided.
- (3) A recording of an open meeting shall:
- (a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and
 - (b) be properly labeled or identified with the date, time, and place of the meeting.
- (4)
- (a) As used in this Subsection (4):
 - (i) "Approved minutes" means written minutes:
 - (A) of an open meeting; and
 - (B) that have been approved by the public body that held the open meeting.
 - (ii) "Electronic information" means information presented or provided in an electronic format.
 - (iii) "Pending minutes" means written minutes:
 - (A) of an open meeting; and
 - (B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.
 - (iv) "Specified local public body" means a legislative body of a county, city, town, or metro township.
 - (v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.
 - (vi) "State website" means the Utah Public Notice Website created under Section 63F-1-701.
 - (b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.
 - (c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.
 - (d) A state public body and a specified local public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.
 - (e) A state public body shall:
 - (i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
 - (ii) within three business days after approving written minutes of an open meeting:
 - (A) post to the state website a copy of the approved minutes and any public materials distributed at the meeting;

- (B) make the approved minutes and public materials available to the public at the public body's primary office; and
- (C) if the public body provides online minutes under Subsection (2)(b), post approved minutes that comply with Subsection (2)(b) and the public materials on the public body's website; and
- (iii) within three business days after holding an open meeting, post on the state website an audio recording of the open meeting, or a link to the recording.
- (f) A specified local public body shall:
 - (i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
 - (ii) within three business days after approving written minutes of an open meeting, post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); and
 - (iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.
- (g) A public body that is not a state public body or a specified local public body shall:
 - (i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;
 - (ii) within three business days after approving written minutes, make the approved minutes available to the public; and
 - (iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.
- (h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.
- (i) Approved minutes of an open meeting are the official record of the meeting.
- (5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.
- (6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
- (7) Notwithstanding Subsection (1), a recording is not required to be kept of:
 - (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or
 - (b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

Amended by Chapter 425, 2018 General Session

52-4-204 Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

- (1) A closed meeting may be held if:
 - (a)
 - (i) a quorum is present;
 - (ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and
 - (iii)

- (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;
 - (B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting;
 - (C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or
 - (D) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 63A-15-701, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or
- (b)
- (i) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints";
 - (ii) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, the closed meeting is convened for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 63A-15-602, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the review of ethics complaints"; or
 - (iii) for the Independent Executive Branch Ethics Commission created in Section 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to an ethics complaint."
- (2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.
 - (3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.
 - (4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:
 - (a) the reason or reasons for holding the closed meeting;
 - (b) the location where the closed meeting will be held; and
 - (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.
 - (5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Amended by Chapter 461, 2018 General Session

52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.

- (1) A closed meeting described under Section 52-4-204 may only be held for:
- (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
 - (b) strategy sessions to discuss collective bargaining;
 - (c) strategy sessions to discuss pending or reasonably imminent litigation;
 - (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:
 - (i) disclose the appraisal or estimated value of the property under consideration; or
 - (ii) prevent the public body from completing the transaction on the best possible terms;
 - (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the public body from completing the transaction on the best possible terms;
 - (ii) the public body previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
 - (f) discussion regarding deployment of security personnel, devices, or systems;
 - (g) investigative proceedings regarding allegations of criminal misconduct;
 - (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
 - (i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);
 - (j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
 - (k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
 - (l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;
 - (m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
 - (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
 - (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
 - (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
 - (n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
 - (o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
 - (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
 - (ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process; or
 - (p) a purpose for which a meeting is required to be closed under Subsection (2).

- (2) The following meetings shall be closed:
- (a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);
 - (b) a meeting of the Child Welfare Legislative Oversight Panel to:
 - (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or
 - (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5); and
 - (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law.
- (3) In a closed meeting, a public body may not:
- (a) interview a person applying to fill an elected position;
 - (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
 - (c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Amended by Chapter 196, 2014 General Session

52-4-206 Record of closed meetings.

- (1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:
- (a) shall make a recording of the closed portion of the meeting; and
 - (b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.
- (2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.
- (3) The recording and any minutes of a closed meeting shall include:
- (a) the date, time, and place of the meeting;
 - (b) the names of members present and absent; and
 - (c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.
- (4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
- (5) A recording, transcript, report, and written minutes of a closed meeting are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.
- (6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):
- (a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2); and
 - (b) the provisions of Subsection (1) of this section do not apply.

Amended by Chapter 425, 2018 General Session

52-4-207 Electronic meetings -- Authorization -- Requirements.

- (1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.
- (2)
 - (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.
 - (b) The resolution, rule, or ordinance may:
 - (i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
 - (ii) require a quorum of the public body to:
 - (A) be present at a single anchor location for the meeting; and
 - (B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;
 - (iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;
 - (iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or
 - (v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.
- (3) A public body that convenes or conducts an electronic meeting shall:
 - (a) give public notice of the meeting:
 - (i) in accordance with Section 52-4-202; and
 - (ii) post written notice at the anchor location;
 - (b) in addition to giving public notice required by Subsection (3)(a), provide:
 - (i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
 - (ii) a description of how the members will be connected to the electronic meeting;
 - (c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;
 - (d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and
 - (e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.
- (4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 31, 2011 General Session

52-4-208 Chance or social meetings.

- (1) This chapter does not apply to any chance meeting or a social meeting.

- (2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

Enacted by Chapter 14, 2006 General Session

52-4-209 Electronic meetings for charter school board.

- (1) Notwithstanding the definitions provided in Section 52-4-103 for this chapter, as used in this section:

- (a) "Anchor location" means a physical location where:
 - (i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and
 - (ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.
- (b) "Charter school board" means the governing board of a school created under Title 53G, Chapter 5, Charter Schools.
- (c) "Meeting" means the convening of a charter school board:
 - (i) with a quorum who:
 - (A) monitors a website at least once during the electronic meeting; and
 - (B) casts a vote on a website, if a vote is taken; and
 - (ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.
- (d) "Monitor" means to:
 - (i) read all the content added to a website by the public or a charter school board member; and
 - (ii) view a vote cast by a charter school board member on a website.
- (e) "Participate" means to add content to a website.

(2)

- (a) A charter school board may convene and conduct an electronic meeting in accordance with Section 52-4-207.
- (b) A charter school board may convene and conduct an electronic meeting in accordance with this section that is in writing on a website if:
 - (i) the chair verifies that a quorum monitors the website;
 - (ii) the content of the website is available to the public;
 - (iii) the chair controls the times in which a charter school board member or the public participates; and
 - (iv) the chair requires a person to identify himself or herself if the person:
 - (A) participates; or
 - (B) casts a vote as a charter school board member.

- (3) A charter school that conducts an electronic meeting under this section shall:

- (a) give public notice of the electronic meeting:
 - (i) in accordance with Section 52-4-202; and
 - (ii) by posting written notice at the anchor location as required under Section 52-4-207;
- (b) in addition to giving public notice required by Subsection (3)(a), provide:
 - (i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;
 - (ii) a description of how the members and the public may be connected to the electronic meeting;
 - (iii) a start and end time for the meeting, which shall be no longer than 5 days; and

- (iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and
- (c) provide an anchor location.
- (4) The chair shall:
 - (a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and
 - (b) allow a charter school board member to change a vote until the end time for when a vote will be taken.
- (5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.
- (6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.
- (7)
 - (a) Written minutes shall be kept of an electronic meeting conducted as required in Section 52-4-203.
 - (b)
 - (i) Notwithstanding Section 52-4-203, a recording is not required of an electronic meeting described in Subsection (2)(b).
 - (ii) All of the content of the website shall be kept for an electronic meeting conducted under this section.
 - (c) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.
- (8)
 - (a) A charter school board shall ensure that the website used to conduct an electronic meeting:
 - (i) is secure; and
 - (ii) provides with reasonably certainty the identity of a charter school board member who logs on, adds content, or casts a vote on the website.
 - (b) A person is guilty of a class B misdemeanor if the person falsely identifies himself or herself as required by Subsection (2)(b)(iv).
- (9) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 415, 2018 General Session

52-4-210 Electronic message transmissions.

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

Enacted by Chapter 25, 2011 General Session

**Part 3
Enforcement**

52-4-301 Disruption of meetings.

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

Enacted by Chapter 14, 2006 General Session

52-4-302 Suit to void final action -- Limitation -- Exceptions.

(1)

(a) Any final action taken in violation of Section 52-4-201, 52-4-202, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.

(b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:

(i) the posting is made for a meeting that is held before April 1, 2009; or

(ii)

(A) the public body otherwise complies with the provisions of Section 52-4-202; and

(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

Amended by Chapter 403, 2012 General Session

52-4-303 Enforcement of chapter -- Suit to compel compliance.

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:

(a) compel compliance with or enjoin violations of this chapter; or

(b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

Renumbered and Amended by Chapter 14, 2006 General Session

Amended by Chapter 263, 2006 General Session

52-4-304 Action challenging closed meeting.

(1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2)

(a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

- (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.
- (3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section 63G-2-103, as provided in Section 63G-2-307.

Amended by Chapter 425, 2018 General Session

52-4-305 Criminal penalty for closed meeting violation.

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Enacted by Chapter 263, 2006 General Session

